

Remarks

This amendment is responsive to the official action of August 1, 2007 and is accompanied by a Request for Continued Examination.

In the official action, claims 17 and 18 were allowed and allowable subject matter was indicated for claims 7-9. Claims 7 and 9 have been placed in independent form including the subject matter of base claim 1, and for claim 7 also intervening claim 3. Claims 7-9, 17 and 18 are allowable in accordance with the official action.

Applicant requests reconsideration and withdrawal of the rejections of independent claim 1 and dependent claims 2-4, 10, 12, 15 and 16, which depend from claim 1. The prior art of record, namely the combination of Humber (US 6,129,109) and Lengyel (US 5,466,886) and/or the combination of Bossert (US 754,414) and Condon (US 5,653,254), or possibly the combination of Bossert and Lengyel, do not establish that the subject matter defined in claim 1 as a whole would have been obvious. Therefore, claim 1 and the claims depending from claim 1 are properly allowable together with the claims that have already been allowed or found to have allowable subject matter.

The stated rejection of claims 1, 2, 4, 12 and 15 relies on Humber in combination with Lengyel; and, the stated rejection of claims 1-4, 10 and 16 relies on Bossert in combination with Condon. However, the comments in the latter rejection (claims 1-4, 10 and 16) mention Lengyel rather than Condon. Condon does not disclose or suggest any structure or function resembling the protruding eyes that extend radially outwardly on an outer surface of the side walls adjacent to the base for affixing the flush-mounting box at the base as defined in applicant's claim 1 at

lines 5-6. In fact, there is no disclosure or suggestion of radially protruding mounting eyes or similar mounting fixtures at the rear of a flush mounting box in any of Humber or Bossert or Condon.

Lengyel discloses mounting eyes 40 (Fig. 1), which are mentioned at col. 4, lines 46-52, as noted in the official action. However Lengyel's teachings concern a box that is embedded into poured concrete. The mounting holes 42 and fasteners 41 are taught by Lengyel to fix the floor box 12 to a surface 43 such as a subfloor or substructure, prior to pouring the concrete floor 29 as shown in Fig. 2 and exclusively at a position where the base of the box abuts against the subfloor. See the Lengyel at col. 4, and especially lines 50-52 regarding setting the box before pouring the concrete floor. Lengyel's box must be cut to size. Lengyel's box is not adjustable in its position or adjustable with respect to the height of a flange affixed to the box at a distance from the base.

Applicant's flush mounting box is intended to solve problems associated with mounting a flush mounting box rigidly to a backing structure so as to accommodate variations in the distance from the backing structure to the inner and/or outer surfaces of a wallboard or similar structure surrounding the opening at the front, where the box is to be flush mounted. Applicant discloses and claims the flange on the outside of the box, plural means on the box for fastening the flange to the box at a selectably variable distance back from the edge and/or forward from the base, and the protruding mounting eyes. Applicant has provided a distinct structural solution to a distinct problem that is not addressed by Lengyel or the other references in any similar way. Applicant's claimed structure accommodates a variable height for the flange and box that are affixed to the rear structure by the ears.

In Lengyel, the box is mounted relative to a subfloor but the distance between the subfloor floor and an associated flange is not selectively changeable by adjustment of any structure of Lengyel's box. The flange on the box has a height that

is determined by stacked abutment of its respective elements. The box is set against the subfloor and the concrete floor is poured to a depth that is predetermined to match that height.

If necessary to establish a particular height, the internal elements of Lengyel's disclosed box are trimmed (i.e., cut longer or shorter) to establish the depth of the box 12 and the position of the flange thereon. There is no aspect of Lengyel's box that accommodates a variation in depth of the flange 26 relative to the box.

Reference can be made to Lengyel at Fig. 4 and the description at col. 7, lines 11-17. If one follows the stacked solid structures shown by crosshatching in the cross sectional view of Lengyel's Fig. 4, from the subfloor 43 through the integrally solid elements of the box, not only is there no adjustable part, there is no room for any variation in elevation. The extension 64 is set in the bottom of the box 12. The upper portion 86 is placed so that the bottom 90 of upper portion 86 abuts against extension 64. The adapter 20 abuts a stepped edge of upper portion 86. The flange 28 abuts the adapter 20. All these stacked parts directly abut one another. It is by cutting the extension 64 to the required height that one can cause the height of the box and/or the elevation of the flange on the box to equal a predetermined height relative to the yet-to-be-poured concrete floor. This is expressly taught in Lengyel at col. 7, lines 11-17.

Under KSR v. Teleflex, a rejection for obviousness must be supported by articulated logic describing why it would be obvious and within the level of ordinary skill to substitute different structures for one another in different prior art references, for example because such structures provide the same advantages and serve the same ends in the references where they were found as the structures serve in the proposed combination. There appears to be no logical reason to suspect that a person of ordinary skill might find it obvious even to try substituting Lengyel's rear attachment radial protruding ears for any of the mounting arrangements found in

Humber or Bossert or Condon. All of Humber, Bossert and Condon seek to space opposed flanges to match the inner and outer sides of the wall panel that faces the installation of the flush mounted box. There is no reason to consider a rear attachment because these devices are structurally affixed to the front and rear of the wallboard (Humber, Bossert) or by one of the flanges being affixed to structural studs (Condon) immediately behind the wallboard.

In the context of applicant's flush mounting box for plumbing fixtures, a secure attachment is provided to a rear supporting surface, which in some of the embodiments can also accommodate a difference in height. In any event, the level of the front flange is selectively set to accommodate an elevation associated with the front surfaces (such as the elevation of the rear side of a wallboard). The invention claimed as a whole is not shown to have been known or obvious.

The prior art references can be said to accommodate different thicknesses of wallboard or other facing material by fixing an elevation of the flange relative to the box (by Humber's teeth 46, or Bossert's vertically spaced slots "m," or by Condon's telescoping fit between box 34 and flange 78). The prior art references alone or in combination do not disclose or suggests a box affixable at rear ears to a substructure, with a flange that has a selectively chosen height.

Claim 1 and the claims depending from claim 1 particularly define the protruding eyes extending radially outwardly on an outer surface of the side walls adjacent to the base for affixing the flush-mounting box at the base, and the plural means on the outside of the box for fastening the flange to the box at a selectably variable distance back from the edge. Claim 1 and its dependent claims are allowable over the prior art of record.

Applicant is pleased to note the allowance of claims 17 and 18 and the indication of allowable subject matter for claims 7-9, now presented in proper form for

allowance. Reconsideration and allowance of all of pending claims 1-4, 7-10, 12 and 15-18 are requested.

Respectfully submitted,

Date: October 29, 2007

/Stephan Gribok/
Stephan P. Gribok, Reg. No. 29,643
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
tel. 215-979-1283
fax. 215-979-1020
spgribok@duanemorris.com

Docket No. D4700-00351
[P 41 860 US]